



December 21, 1999

Mr. Mert Davis
SPCA of Texas
McKinney Facility
506 Interchange Way
McKinney, Texas 75207-4496

OR99-3690

Dear Mr. Davis :

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130698.

The Society for the Prevention of Cruelty to Animals of Texas, the McKinney Facility, (the "SPCA") received a request for the name and telephone number of an individual who made a report to the SPCA about loose dogs. You ask whether you must release the requested information.

Section 552.301 of the Government Code requires that a governmental body that receives a written request for information which the governmental body wishes to withhold seek an attorney general decision within ten business days of its receipt of the request as to whether the information may be withheld. Section 552.301(e)(1) of the Government Code requires that a governmental body seeking an attorney general decision as to whether it may withhold information submit to this office copies of the request, a statement or evidence as to the date the written request was received, as well as the requested information, or representative samples thereof, no later than the 15th business day after it received the request. Section 552.302 provides that if a governmental body fails to timely submit the materials required by section 552.301, the requested information must be released unless there is a "compelling reason" to withhold the information.

In this case, we are not able to determine when the SPCA received the written request. The SPCA's letter to this office asking whether the information at issue could be withheld is dated October 18, 1999. To date, this office has not received a copy of the request, a statement or evidence as to the date the request was received, or the information at issue as required by section 552.301(e)(1). Consequently, the requested name and telephone number must be released pursuant to section 552.302.

We note that there is no basis for us finding a “compelling reason” under section 552.302 for withholding the requested information in this instance. Although your letter to this office could be read to raise the informer’s privilege, which has been treated by this office as an aspect of the exception to disclosure found in section 552.101 of the Government Code, that basis for withholding information may be waived by the governmental body, for instance by failure to comply with the requirements of section 552.301. Thus, the informer’s privilege may not serve as a “compelling reason” for withholding information under section 552.302. *See*, Open Records Decision Nos. 549 (1990) (governmental body may waive informer’s privilege), 150 (“compelling reason” for withholding information would be that information is confidential by law or implicates third party interests).¹

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

¹Section 552.101 of the Government Code excepts from disclosure, *inter alia*, information made confidential by judicial decision. The informer’s privilege has been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). In *Roviaro v. United States*, 353 U.S. 53, 59 (1957), the United States Supreme Court explained the rationale that underlies the informer’s privilege:

What is usually referred to as the informer’s privilege is in reality the Government’s privilege to withhold from disclosure the identity of persons who furnish information of *violations of law to officers charged with enforcement of that law*. [Citations omitted.] The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials and, *by preserving their anonymity*, encourages them to perform that obligation. [Emphasis added.]

The “informer’s privilege” aspect of section 552.101 protects the identity of persons who report violations of the law. When information does not describe conduct that violates the law, the informer’s privilege does not apply. Open Records Decision Nos. 515 (1988); 191 (1978). Although the privilege ordinarily applies to the efforts of law enforcement agencies, it can apply to administrative officials with a duty of enforcing particular laws. Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 285, 279 (1981); *see also* Open Records Decision No. 208 (1978). This may include enforcement of quasi-criminal civil laws. Open Records Decision Nos. 515 (1988); 391 (1983). The privilege does not, however, protect the contents of communications if they do not reveal the identity of the informant. *Roviaro v. United States*, 353 U.S. at 60. Because part of the purpose of the privilege is to prevent retaliation against informants, the privilege does not apply when the informant’s identity is known to the individual who is the subject of the complaint. *See* Open Records Decision No. 208 (1978).

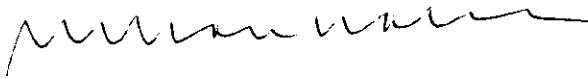
filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/ljp

Ref: ID# 130698